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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/788,716

Filing Date: February 27, 2004

Appellant(s): NEAL, MURRAY L.

Farzad E. Amini
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/17/2009 appealing from the Office action mailed 12/11/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5746032	Koike	5-1998
3016993	Owen	01-1962
4525966	Litchfield et al	07-1985
4115964	Montrouil	09-1978

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Koike et al (5746032).

Koike et al (figure 2) shows a window framing system comprising a plurality of pieces that are structural components of a primary frame, the pieces including a sub-frame (22,8) and a base (21), the sub-frame having a corner to receive the glazing unit, the base to be assembled with the sub-frame so as to secure the unit in the corner, the sub-frame having an elongated portion with an L-shaped cross section that defines the corner, the L-shaped cross section having a first segment in which there are a first plurality of holes(figure 2, the holes in the middle at the bottom) through which the sub-frame is to be secured to one o f a head, jamb, and sill at the site, a second segment with a cavity having an enclosed cross section formed therein (figure 2, the space underneath part 20 is enclosed by the sub-frame) that occupies a substantial portion of the second segment and runs lengthwise through a substantial part of the elongated portion, the sub-frame having a plurality of screw holes (where screws 24) formed lengthwise in the first segment, each of the screw holes communicates with an opening that allows material which has

been cut, due to a screw being driven in the hole, to exit so as not to fill up the hole (the spanning space where 24a is in figure 4), the base having an elongated portion with an L-shaped cross section whose first segment (23, 70) lies against the glazing in the corner and whose second segment(21a, figure 4) is to be segment to the sub-frame, the first and second segments lead into a fillet having a chamber at its corner (figure 4, the chamfer between the part 21a and the first part 23 at the area a little bit atop to the right of part 24).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 7-9, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litchfield et al (4525966) in view of Owen (3016993)..

Litchfield et al (figure 2) shows a window framing system comprising a plurality of pieces that are structural components of a primary frame, the pieces including a sub-frame (7, 6, 5, 17) and a base (12, 12B), the sub-frame having a corner to receive the glazing unit, the base to be assembled with the sub-frame so as to secure the unit in the corner, the sub-frame having an elongated portion with an L-shaped cross section that defines the corner, a second segment (where 7 is) with a cavity having an enclosed cross section formed therein that occupies a substantial portion of the second segment and runs lengthwise through a substantial part of the elongated portion, the base to be assembled with the sub-frame so as to secure the glazing unit in the corner, the sub-frame having a plurality of screw holes (where holes 22, 21, 19 are and the

holes are able to function as claimed) formed lengthwise in the first segment, each of the screw holes communicates with an opening that allows material which has been cut, due to a screw being driven in the hole, to exit so as not to fill up the hole, the base having an elongated portion(128B, the vertical part underneath and the horizontal part connected to the vertical part thereof) with an L-shaped cross section whose first segment (12B and the vertical part) lies against the glazing in the corner and whose second segment(the connected horizontal part, figure 3) is to be secure to the sub-frame, the first and second segments lead into a fillet having a chamfer at its corner (figure 3, the chamfer between the vertical part and the connected horizontal part) at its corner, each of the sub-frame and the base is essentially made of a continuous piece of material, a second segment perpendicular to the first segment, the first segment and second segment integrally formed with one another.

Litchfield et al does not show the L-shaped cross section having a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at the site.

Owen discloses holes through which screws (32, left and right, figure 1) secure the sub-frame to one of a head, jamb, and sill at the site.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Litchfield et al's structures to show the L-shaped cross section having a first segment in which there are a first plurality of holes through which the sub-frame is to be secured to one o f a head, jamb, and sill at the site because it would enable the secure fastening of the sub-frame in place as taught by Owen.

Per claim 9, Litchfield et al as modified further shows the first segment of the sub-frame has a second plurality of holes (the other set of holes for screws 32) formed laterally in the first segment and through which the sub-frame is to be secured to one of the head, jamb, and sill at the job site by means of a plurality of anchor fasteners (32).

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Litchfield et al (4525966) in view of Owen (3016993) as applied to claim 9 above and further in view of Montrouil (4115964).

Litchfield et al as modified shows all the claimed limitations except for some of the second plurality of holes is lined up directly behind the glazing unit that is installed in the corner, and some others of the plurality of holes is lined up directly behind corresponding holes in the base through which anchor fasteners are to be passed for securing the sub-frame to one of the head, jamb and sill at the job site.

Montrouil discloses fasteners (20) fastening a base to the sub-frame and to a jamb through the sub-frame, fasteners (the parts which go through part 95) going through holes lined up directly behind the glazing unit that is installed in the corner to secure the sub-frame to the jamb.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Litchfield et al's modified structures to show some of the second plurality of holes is lined up directly behind the glazing unit that is installed in the corner, and some others of the plurality of holes is lined up directly behind corresponding holes in the base through which anchor fasteners are to be passed for securing the sub-frame to one of the head, jamb and sill at

the job site since it enables secure fastening of the base and the sub-frame to a jamb as taught by Montrouil.

5. Claims 11, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litchfield et al (4525966) in view of Owen (3016993) as applied to claim 1 or 29 above and further in view of Montrouil (4115964).

Litchfield et al as modified shows all the claimed limitations except for the sub-frame and the base each made of extruded aluminum.

Montrouil discloses aluminum being a well known and widely used material for window frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Litchfield et al's modified structures to show the base and sub-frame being made of extruded aluminum since aluminum provides for a window structure which is light weight, rust resistance, and strong; and aluminum is a well known and widely used material for window structure as taught by Montrouil.

(10) Response to Argument

With respect to Koike and claims 1, 7-8, examiner respectfully sets forth the followings. Koike figure 2 shows a second segment shows a second segment (2, 20, 22) having a cavity (the space between the portions 20, 2). The cavity is formed is formed between the portions (20, 2, 22) and enclosed within the portions of the second segment. The cavity occupies a substantial portion of the second segment and runs lengthwise through a substantial part of the elongated portion. The cavity is thus enclosed within the portions of the second segment. The cavity is

bounded by the portions of the second segment. The reference therefore shows a second segment perpendicular to the first segment with a cavity having an enclosed cross section formed therein as claimed.

With respect to claims 1, 7-9, 29, 30 to Litchfield et al in view of Owen, and applicant's statement that the references do not show the sub-frame is to be secured to one of a head, jamb, and sill at a job site, examiner would like to point out the followings.

First of all, the references to Litchfield, and Owen, are inventions to window systems and frames to be mounted in window openings. Litchfield et al as modified thus needs to be secured to some kind of framing members in a window opening when installed, and the modified reference shows a plurality of holes on the first segment that enables the sub-frame to be attached to a supporting structure. The framing members may be any supporting structures including a head, jamb, and sill etc....

Secondly, the claim states "to be secured to one of a head, jamb and sill at the site" are intended use language. Applicant is not claiming a head, jamb or a sill. Litchfield's structures as modified, certainly can be secured to one of a head, jamb and sill at the site as claimed. There is nothing in the claim that would prevent the modified reference from being used as claimed. Furthermore, it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The arguments are thus not persuasive.

Applicant's argument to claims 10, 11, and 31 are also not persuasive in view of the response set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Phi D. A/

PHI DIEU TRAN A

Conferees:

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